

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff/Respondent,

v.

No. CV 13-0966 RB/LAM
CR 10-3160 RB

MARIO DEVONNE WASHINGTON,

Defendant/Movant.

ORDER WITHDRAWING RECOMMENDATION OF DISMISSAL AND
ORDERING PLAINTIFF TO ANSWER

THIS MATTER is before the Court on Plaintiff/Respondent's (hereinafter, "the Government") *United States' Motion for Extension of Page Limits for Response Brief* (Doc. 24), filed March 5, 2014. This matter is also before the Court on Defendant/Movant's (hereinafter "Defendant") *Motion in Opposition to an Enlargement of Time* (Doc. 10); *Motion to Expedite the Reading* (Doc. 21); and *Petitioner's Motion to Amend the Objection to the Magistrate's Proposed Find[ings] and Recommended Disposition* (Doc. 20). Having considered the motions and record of the case, the Court FINDS that its recommendation of dismissal of Defendant's § 2255 motion in its *Proposed Findings and Recommended Disposition* (Doc. 17) be WITHDRAWN; that Docs. 24 and 20 be GRANTED; and that Docs. 10 and 21 be DENIED as moot.

On February 13, 2014, the undersigned recommended granting the Government's motion to dismiss Defendant's § 2255 motion [Doc. 14] without prejudice because Defendant had filed a petition for writ of certiorari with the United States Supreme Court, which meant that Defendant's direct appeal was still pending and his § 2255 motion was premature. [Doc. 17]. In the

Government's motion for extension of page limits, the Government states that, on February 24, 2014, the United States Supreme Court denied Defendant's petition for writ of certiorari, so the Government "concedes that its motion to dismiss without prejudice is now moot." [Doc. 24 at 2]; *see also* [Doc. 219, filed in Case No. CR-10-3160 RB]. In addition, the Government states that it will file a response brief no later than March 13, 2014, and asks the Court to extend the page limits for the response brief from 24 pages to not more than 34 pages, in order to address Defendant's numerous claims. *Id.*

On February 27, 2014, Defendant filed objections to the Court's recommended disposition [Doc. 19], and, on March 3, 2014, Defendant filed a motion to amend his objections to the PF&RD [Doc. 20], stating that, because his petition for writ of certiorari has been denied, his § 2255 motion should proceed. In Defendant's ***Motion in Opposition to an Enlargement of Time*** (Doc. 10) and ***Motion to Expedite the Reading*** (Doc. 21), Defendant asks the Court to expedite its consideration of his § 2255 motion.

Because the Government's motion to dismiss is now moot, the Court will **WITHDRAW** its recommendation to dismiss Defendant's § 2255 motion as having been prematurely filed [Doc. 17], and the Government shall withdraw **no later than March 13, 2014** its motion to dismiss Defendant's § 2255 motion on the grounds that it was prematurely filed [Doc. 14]. In addition, the Court will **GRANT** the Government's motion for extension of page limits for its response to the § 2255 motion [Doc. 24], and the response shall be filed **no later than March 13, 2014**. The Court will also **GRANT** Defendant's motion to amend his objections [Doc. 20] to the extent he is asking for his § 2255 motion to proceed. Because the Government's response to Defendant's § 2255 motion will be filed within one week, and because the Court can

now proceed in its consideration of Defendant's § 2255 motion since his petition for writ of certiorari has been denied, the Court will **DENY as moot** Defendant's motions to expedite consideration of his § 2255 motion [*Docs. 10 and 21*]. Defendant is advised that the Court will consider this case in due course.

IT IS THEREFORE ORDERED that the *Proposed Findings and Recommended Disposition* (*Doc. 17*) are hereby **WITHDRAWN** and the Government shall withdraw its motion to dismiss Defendant's § 2255 motion as having been prematurely filed [*Doc. 14*] **no later than March 13, 2014**.

IT IS FURTHER ORDERED that *United States' Motion for Extension of Page Limits for Response Brief* (*Doc. 24*) is **GRANTED**, and that the Government's response to Defendant's § 2255 motion be filed **no later than March 13, 2014**.

IT IS FURTHER ORDERED that *Petitioner's Motion to Amend the Objection to the Magistrate's Proposed Findings and Recommended Disposition* (*Doc. 20*) is **GRANTED** to the extent Defendant is asking for his § 2255 motion to proceed.

IT IS FURTHER ORDERED that Defendant's *Motion in Opposition to an Enlargement of Time* (*Doc. 10*) and *Motion to Expedite the Reading* (*Doc. 21*) are **DENIED** as moot.

IT IS SO ORDERED.



LOURDES A. MARTÍNEZ
UNITED STATES MAGISTRATE JUDGE